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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re T.P., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ROBERT P.,

Defendant and Appellant.

D074971

(Super. Ct. No. J519780)

APPEAL from findings and orders of the Superior Court of San Diego County,
Kimberlee A. Lagotta, Judge. Affirmed.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant
and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County
Counsel, and Jesica N. Fellman, Deputy County Counsel, for Plaintiff and Respondent.

Robert P. (Father) appeals the juvenile court's jurisdictional and dispositional findings and orders over his son, T.P. Father requests this court's review of only a portion of the jurisdictional allegations pertaining to his conduct even though an independent, unchallenged basis exists for the court's dependency jurisdiction over T.P. (Welf. & Inst. Code,¹ § 300, subd. (b).) For reasons we explain, we decline to address the merits of Father's claim. Further, we conclude he forfeited his right to challenge the court's placement order on disposition. (§ 361.2, subd. (a).) Accordingly, the court's findings and orders are affirmed.

BACKGROUND

Since 2017, Father has lived in Oklahoma. Prior to T.P.'s dependency case, Father became incarcerated in Oklahoma and remained incarcerated throughout the relevant juvenile court proceedings.² In June 2018, the San Diego County Health and Human Services Agency (Agency) became aware of five-year-old T.P.'s need for protection in San Diego. His mother (Mother) was using methamphetamine daily in T.P.'s presence and recently, had inadvertently left him at the house of a virtual stranger for 10 days.³

The Agency filed a dependency petition on behalf of T.P. under section 300, subdivision (b), alleging he had suffered or there was a substantial risk he would suffer

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

² The offenses giving rise to Father's incarceration appear to have occurred in or prior to April 2018.

³ Mother is not a party to this appeal, and she will be mentioned only as relevant to Father's appeal.

serious physical harm as a result of his parents' inability to care for him. Specifically, the petition alleged that Mother used methamphetamine daily, including when T.P. was in her care, and that Mother's drug use rendered her unable to care for her son. The petition also alleged that Father was currently incarcerated.

The juvenile court detained T.P. out of home. Meanwhile, the Agency began communicating with Father, who indicated he would like to care for T.P. after his release from prison. Father reported that he was in custody in connection with driving-under-the-influence (DUI) charges and it was uncertain when or how those charges would resolve. Father has an extensive criminal history over many years involving domestic violence, DUI, and various theft-related offenses. The Agency continued to evaluate T.P.'s relatives for placement, including the paternal grandfather.

At a continued jurisdiction and disposition hearing in September 2018, Father's appointed counsel stated: "On behalf of the Father, I [am] ready to proceed by way of a document trial and jurisdiction. If the [c]ourt does make a true finding, Father would be submitting on the case plan and the recommendations[.]" The court set a settlement conference date and contested hearing (trial) date for the following month.

At the settlement conference, it became clear that a separate trial date would not be necessary. Mother had absented herself from the proceedings, and the court granted her appointed counsel's request to be relieved as counsel. Father's counsel confirmed that Father was still in custody in Oklahoma and reiterated: "I'm ready to proceed by way of document trial on jurisdiction. If the [c]ourt does find jurisdiction, we would be submitting on the dispositional recommendations, knowing that the Agency is continuing

to work to evaluate the paternal grandfather . . . and any other relatives that the father can provide to the Agency."

The court proceeded to receive in evidence the Agency's detention report, jurisdiction disposition report, and two addendum reports, without objection. Regarding jurisdiction, there was no live testimony, no affirmative evidence proffered by Father, and no affirmative argument by Father. The court made a true finding on the petition by clear and convincing evidence and declared T.P. to be a dependent child under section 300, subdivision (b)(1). The court discussed Mother's long history of untreated substance abuse and the fact that there was no parent available to care for T.P.

Regarding disposition, the court ordered T.P.'s removal from Mother's custody and his placement in foster care, and it made several modifications to the Agency's written recommendations per the Agency's oral request. The court announced its finding that (1) there was "not a noncustodial parent available" for placement purposes; (2) it would be detrimental for T.P. to be placed with Father under section 361.2, subdivision (a), because he was currently incarcerated without a release date and was thus unavailable to care for T.P.; and (3) reunification services should be provided to both Father and Mother. Father did not assert any objections to or indicate disagreement with the court's dispositional findings or orders. This appeal followed.

DISCUSSION

I. *Father's Jurisdictional Challenge is Nonjusticiable*

Father challenges only one jurisdictional allegation found true by the court—the allegation that his incarceration made him unable to care for T.P. Father argues his

incarceration alone could not support jurisdiction over T.P. without some evidence that Father was unable to make alternative arrangements for T.P.'s care. Father does not address the remaining jurisdictional allegations, e.g., those relating to Mother's daily methamphetamine use in T.P.'s presence, which the court found clearly endangered the child and created a substantial risk of harm. As it is, the primary basis for the court's dependency jurisdiction stands unchallenged.

The Agency contends that the issue Father raises is nonjusticiable because the juvenile court's jurisdiction over T.P. was not based on Father's conduct alone. We find merit in the Agency's position.

Justiciability refers to whether an issue is an existing controversy and not a moot question or abstract proposition. An important requirement of justiciability is a court's ability to grant "effective" relief—that is, a remedy that can have a practical, tangible impact on the parties' conduct or legal status. It is our duty to decide actual controversies by a judgment that can be carried into effect, and not to give opinions upon moot questions or abstract propositions. (*In re Madison S.* (2017) 15 Cal.App.5th 308, 328-329 (*Madison S.*); *In re I.A.* (2011) 201 Cal.App.4th 1484, 1490 (*I.A.*).)

Regarding dependency jurisdiction, it "is commonly said that the juvenile court takes jurisdiction over children, not parents. . . . The law's primary concern is the protection of children. [Citation.] The court asserts jurisdiction with respect to a child when one of the statutory prerequisites listed in section 300 has been demonstrated. [Citation.] The acquisition of personal jurisdiction over the parents through proper notice follows as a consequence of the court's assertion of dependency jurisdiction over their

child." (*I.A.*, *supra*, 201 Cal.App.4th at p. 1491; see also *In re A.R.* (2014) 228 Cal.App.4th 1146, 1150.)

"As a result of this focus on the child, it is necessary only for the court to find that one parent's conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300 . . . the child comes within the court's jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established." (*I.A.*, *supra*, 201 Cal.App.4th at pp. 1491-1492.)

In this case, Father argues his incarceration did not pose a substantial risk of harm to T.P. to support dependency jurisdiction. However, because he does not challenge the jurisdictional finding involving Mother's conduct, any decision we might render on the allegations involving Father will not result in reversal of the court's order assuming jurisdiction. The juvenile court will still be entitled to assert jurisdiction over T.P. based on the unchallenged allegations. Further, the court will still be permitted to exercise personal jurisdiction over Father and adjudicate his parental rights, if any, since that jurisdiction is derivative of the court's jurisdiction over T.P. and is unrelated to Father's role in creating the conditions justifying the court's assumption of dependency jurisdiction. Under the circumstances, his jurisdictional challenge is nonjusticiable.

Vacating the jurisdictional finding "as to Father" would not have any legal or practical consequence.

There are exceptions to the justiciability doctrine when a court may, in its discretion, consider a jurisdictional challenge that is otherwise nonjusticiable. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; *Madison S.*, *supra*, 15 Cal.App.5th at p. 329.) We are not convinced those exceptions apply here. Courts have occasionally reviewed a nonjusticiable jurisdictional finding when that finding serves as the basis for a dispositional order that is also challenged on appeal. However, as we discuss *infra*, Father forfeited his right to challenge the court's placement decision on disposition. He does not identify any other specific, concrete harm that will occur if we do not vacate the jurisdictional finding "as to him." (See, e.g., *I.A.*, *supra*, 201 Cal.App.4th at pp. 1493-1495; *In re Madison S.*, *supra*, 15 Cal.App.5th at pp. 329-330.) Thus, we decline to review the jurisdictional allegation pertaining to Father's incarceration.

II. *Forfeiture of Challenge to Court's Detriment Finding and Placement Order*

Regarding disposition, Father claims insufficient evidence supports the court's finding that placing T.P. in his care would be detrimental to T.P. (§ 361.2, subd. (a).)

Section 361.2 governs the rights of noncustodial parents. It provides: "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent *unless it finds that placement with that parent would*

be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a), italics added; *In re Liam L.* (2015) 240 Cal.App.4th 1068, 1081.) " 'A detriment evaluation requires that the court weigh all relevant factors to determine if the child will suffer net harm.' " (*In re Liam L.*, at p. 1086.) Among the factors in determining detriment are the noncustodial, incarcerated parent's ability to make suitable arrangements for the care of the child and the length of that parent's incarceration. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 700; *In re S.D.* (2002) 99 Cal.App.4th 1068, 1077.)

The Agency contends Father forfeited his claim regarding the court's detriment finding and placement order. Prior to the court's making the challenged finding/order, Father's counsel stated, twice, that he would be "submitting" on the Agency's dispositional recommendations if the court found a basis to take jurisdiction.⁴ Then, when the Agency orally requested a finding of detriment as to placement with Father, his counsel did not object or suggest any alternative.

We conclude that Father's challenge to the court's detriment finding has not been preserved for our review. If an appellant does not properly raise an issue in trial court, he or she may not raise the issue on appeal, i.e., the issue is forfeited. The purpose of the forfeiture rule is to encourage parties to bring errors to the attention of the juvenile court

⁴ As the Agency points out, submitting on recommendations indicates "acquiescence" to the social worker's recommended findings and orders, effectively endorsing the court's adoption of the social worker's recommendations. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 589.) The Agency's written recommendations included that T.P. be placed in foster care.

so that they may be corrected, promoting judicial efficiency, fairness, and a complete record. (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 754; *In re Kevin S.* (1996) 41 Cal.App.4th 882, 885-886 [collecting instances of forfeiture/waiver in dependency cases].) Here, had Father objected, the juvenile court could have easily addressed the basis for its detriment finding in greater detail, or entered a different order altogether. It is not fair for him to raise the issue now. (*In re Kevin S.*, at p. 886.) Accordingly, we will not entertain the issue raised by Father on appeal.

DISPOSITION

The jurisdictional and dispositional findings and orders are affirmed.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

IRION, J.